



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-64/58254

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2003, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Walworth County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on June 19, 2003, at Elkhorn, Wisconsin. The record was held open to give the community spouse an opportunity to submit a detailed monthly budget.

The issue for determination is whether the spousal income allocation can be increased above the minimum community spouse income allowance (CSIA).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Respondent:

Wisconsin Department of Health and Family Services

Division of Health Care Financing

1 West Wilson Street, Room 250

P.O. Box 309

Madison, WI 53707-0309

By:, Economic Support Staff

Walworth County Dept Of Human Serv

W4051 County Rd NN

Elkhorn, WI 53121-1006

Administrative Law Judge:

David D. Fleming

Division of Hearings and Appeals

FINDINGS OF FACT

1. The Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) passed away on July 19, 2003 at age 56. He was a resident of Walworth County at all times relevant here.
2. The Petitioner's spouse lives in the community.

3. An application for institutional MA was filed with the county agency on May 15, 2003 on behalf of the Petitioner seeking MA coverage effective May 13, 2003 forward. The application was approved effective May 13, 2003.
4. At the time of the Petitioner's MA application the Petitioner's income was \$ 2048.00 per month, consisting of Social Security benefits in the amount of \$1188 and a disability payment of \$200 per week or \$860.00 per month (\$200 x 4.3). The Petitioner's community spouse works full-time and earns \$10.85 per hour and is paid weekly. This makes her monthly income \$1866.20. The total income for the couple was \$3914.20 at the time of the determinations made here.
5. The county agency allocated \$153.80 of the Petitioner's income to the community spouse and applied \$1849.20 to the Petitioner's cost of care.
6. The budget submitted by the Petitioner's wife shows the following monthly expenses for herself:

• Home Repairs	\$30	
• Gas	\$60	
• Clothes	\$50	
• Groceries	\$400	(The Petitioner's spouse has a food allergy called Celiac Sprue Disease – an allergy to wheat, oat, rye, and bran. The gluten free foods are more costly).
• Prescriptions	\$30	
• Personal Needs	\$35	
• Entertainment	\$60	
• Health Ins.	\$64.50	
• Federal taxes	\$188.30	
• FICA	\$137.80	
• State taxes	\$93.90	
• 401K	\$112	
• Car Ins.	\$158	
• Mobile Home Ins.	\$16.67	
• Parking Fee (tax on mobile home)	\$6.13	
• Dentist	\$25	
• Bank One (Camry Payment)	\$255	
• Chrysler (Neon)	\$235	
• Lot Rent	\$300	
• Water Bill	\$30	
• Century Telephone	\$40	
• MCI	\$20	
• Electric	\$143	
• Med Associates (Dr. Office)	\$50	
• PRM Hospital Bills	\$50	
• Lynn Bartle (Neurosurgeon)	\$100	(\$3628)
• Mayo Medical	\$25	(\$461) (Insurance did not pay items)
• Pro Health Care	\$20	(\$165)
• Waukesha Health System	\$25	(\$480)
• Parent Plus Loan (Daughters College)	\$337	
• Cable & Road Runner	\$125	
• JC Penny's	\$15	
• Sears	\$50	

• F & M Bank	\$30
• Direct Merchants Bank (VISA)	\$100
• Providian VISA	\$50
• Target	\$30
• Cap 1 MASTER CARD	\$20
• SAME	\$20
• Cap'l VISA	\$40
• Empire Carpet	\$100
• Community Memorial Hospital	\$20
TOTAL:	\$3697.30

DISCUSSION

The current (applicable for 2003) community spouse income allowance (CSIA) is the *lesser* of \$2266.50 per month, or \$1990.00 plus the amount of shelter expenses incurred each month by the community spouse which exceed \$597.00, known as the "excess shelter allowance". *Wis. Stats. § 49.455(4)(b), Medicaid Eligibility Handbook, App. 23.0.0*. The CSIA is considered to be the amount of monthly income the spouse of an individualized individual requires to continue residing in the community and meeting his or her basic maintenance needs.

The Division of Hearings and Appeals has the authority to increase the CSIA above the minimum where it is insufficient to meet a particular community spouse's basic maintenance needs. *Wis. Stats. §49.455(8)(c); Wis. Adm. Code §HFS 103.075(8)(c); Medicaid Eligibility Handbook, Appendix 23.6.0.A*. This increase can occur only if it is established that the community spouse requires income above the level provided by the minimum due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stats. §49.455(8)(c); Wis. Adm. Code §HFS 103.075(8)(c)*.

The term "exceptional circumstances resulting in financial duress" is defined as situations which result in the community spouse being unable to provide for his or her own necessary and basic maintenance needs. *Wis. Adm. Code §HFS 103.075(8)(c), Wis. Adm. Code; see also Medicaid Eligibility Handbook, Appendix 23.6.0, Part A*.

In this case the expenses of the Petitioner's community spouse are noted in Finding # 6. She seeks an increase in the CSIA to meet these expenses. In reviewing her total budget there are some items that I must disallow, specifically: cable and RoadRunner - \$ 125, a college loan payment for a daughter - \$337 and a second car payment of \$235.00. These total \$697.00 and cannot be said to be necessary to prevent the community spouse from providing for her own necessary and basic maintenance needs. I am, therefore, increasing the Petitioner's CSIA but am subtracting this amount from the expenses noted at Finding # 6. This reduces those expenses to \$3000.30 and I am granting an increase in the CSIA to that amount.

CONCLUSIONS OF LAW

1. That the Petitioner's community spouse has expenses for basic maintenance needs in excess of CSIA.
 2. That CSIA for the Petitioner's community spouse is established at \$3000.30.
- NOW, THEREFORE, it is ORDERED**

That the matter be remanded to the county agency with instructions to increase the community spouse's Community Spouse Income Allocation (CSIA) to \$3000.30. This action is to be taken within ten (10) days of the date of this decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in § 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in § 227.53 of the statutes.

Given under my hand at the City of
Milwaukee, Wisconsin, this 27th day of
August, 2003

/sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals
8-22/DDF